IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 207 of 2000(A)

OA.35/1998 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANTS:

1.THETHI,S/O.LATE VELAYUDHAN, AGED 58 YEARS, MANIYATH HOUSE,NECHUR,PAZHAMBOLAKODE, VILLAGE, ALATHUR TALUK, PALAKKUD DISTRICT.

ADDL.APPELLANTS 2 TO 4:

2.MRS.RADHA,W/O.LATE THEETHI.

3.MRS.MINI,D/O.LATE THEETHI.

4.SAJEESH,S/O.LATE THEETHI,MANIYATH HOUSE, NECHUR, PAZHAMBALAKODE VILLAGE, ALATHUR TALUK,PALAKKAD.

ADDL.APPELLANTS 2 TO 4 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF THE DECEASED 1ST APPELLANT AS PER ORDER DATED 18.3.2004 IN C.M.P.89/2002

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:

1.THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2.THE CUSTODIAN OF VESTED FORESTS, OLAVAKODE, PALAKKAD.

BY GOVERNMENT PLEADER SEI.M.P.PRAKASH FOR R1 AND R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.207 OF 2000 (A)

Dated this the 30th day of October, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the claimants who approached the Forest Tribunal contending that 2.55 acres of land (1.03 hectares) situated at Tarur Village, Palakkad District was in their possession and cultivation. When forest officials disturbed their possession contending that the land is private forest and vested in the Government, they approached Forest Tribunal claiming that their land is exempted under Section 3(2) of the Kerala Private Forest (Vesting and Assignment) Act, 1974 (in short "the vesting Act"). Tribunal found that from the various documents produced, petitioner was in possession of the land before the relevant date, that is, 1.1.1971. Tribunal also found in evidence that the cultivable portion of the land was under their personal cultivation from 1964 onwards before the Kerala Land Reforms Act came into force. Certain portions

were rocky and that portion alone is not cultivated. So the entire cultivable portion of the property involved were personally cultivated by the appellant and they were in possession of the land. But, his application was rejected because Exts.A9 and A10 certificates produced by them to show that they are not possessing land in excess of the ceiling area were not proved by examining the Village Officer who issued it and schedule in that is not corresponding to the schedule in the petition. Ext.A9 was issued for production in the Canara Bank and Ext.A10 was issued for production in Krishi Bhavan, Tarur. It is issued by a competent officer in the official course and he was officer of the appellant State. Ext.A9 states that petitioner is in possession of 2.70 hectares of land and his wife is possessing 95 ares and 9 square metres of land. Both certificates are issued by the Village Officer showing that the land was possessed by them. If that land is also included along with 2.55 acres of this land, the total extent also will be within the ceiling area. In any event, they have produced documents to show what are the lands other than the land in question. In any event, it is very clear that in the application

itself they have stated that they are not possessing and land is in excess of the ceiling area. In the counter statement, pleadings of the appellant, the above averment was not denied. PW2 while examined stated that their family is not possessing any land in excess of the ceiling area. Even though burden is on the petitioner to prove that petitioner is holding the land in excess of the ceiling area as provided under the Act. PW2's deposition in chief was not cross examined. That was averred and proved by the evidence of PW2 and it was not controverted. Tribunal should not have rejected the application holding that they were not holding the land in excess of the ceiling area. In any event, in the absence of pleadings to the contrary and in the absence of cross examination of PW2's evidence, it can be seen that petitioner's case ought have been accepted by the tribunal. Land involved is a small extent, personally cultivated by them before 1960 as can be seen from the judgment as decided in O.S.No.62/1964 (Ext.A1). Counsel for the respondent stated that it was a cultivated area. Tribunal also found that land is under the respondents possession and personally cultivated. Hence we allow the

application and set aside that part of the order which is against the appellant and the appellants are entitled to get the declaration as prayed for. Hence applications before the tribunal stand allowed. This appeal is allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.207 OF 2000 (A)

J U D G M E N T

30th October, 2007